

STATE OF MICHIGAN
COURT OF APPEALS

RANDALL ANTHONY SCOTTI,

Plaintiff-Appellant,

v

JOY ELLEN SCOTTI,

Defendant-Appellee.

UNPUBLISHED

May 6, 2010

No. 294259

Oakland Circuit Court

Family Division

LC No. 04-695786-DM

Before: MARKEY, P.J., and ZAHRA and GLEICHER, JJ.

PER CURIAM.

Plaintiff appeals by right from the trial court's order denying his motion seeking a best interests custody hearing predicated on a demonstration of proper cause or a change in circumstances. On appeal, plaintiff argues that the trial court committed factual and legal errors when it concluded that plaintiff had not made the required demonstration. We affirm.

The parties were divorced on November 9, 2005. They have four children, born between 1998 and 2003. The original judgment of divorce granted defendant physical custody of the children, and granted plaintiff substantial parenting time, including on every other weekend.

Plaintiff argues on appeal that trial court's findings were against the great weight of the evidence and its holding was an abuse of the court's discretion.¹ In custody cases, all orders and judgments by the trial court shall be affirmed unless "the trial judge made findings of fact against the great weight of evidence or committed a palpable abuse of discretion or a clear legal error on a major issue." MCL 722.28; *Berger v Berger*, 277 Mich App 700, 705; 747 NW2d 336 (2008). The court's ultimate decision regarding a custody issue is a discretionary ruling that this Court reviews for a palpable abuse of discretion. *Id.* Statutory interpretation is a question of law that this court reviews de novo. *Brausch v Brausch*, 283 Mich App 339, 347; 770 NW2d 77 (2009).

¹ Plaintiff attempts to break this argument into three separate issues, but they are merely repetitious, so we will treat them as one.

We observe that plaintiff has abandoned this issue on appeal by failing to properly brief it. Plaintiff's recitation of applicable facts contains no citation to the factual record of this case (or any other record). MCR 7.212(C)(7). Plaintiff's argument is one sentence long and contains no citation to supporting authority. *Id.* An appellant may not simply announce a position on appeal and leave it to this Court to rationalize the basis for that claim. *Eldred v Ziny*, 246 Mich App 142, 150; 631 NW2d 748 (2001).

Moreover, plaintiff has not proffered evidence from which the trial court could have concluded that there was either proper cause—"one or more appropriate grounds that have or could have a significant effect on the child's life to the extent that a reevaluation of the child's custodial situation should be undertaken"—or a change in circumstances—material changes to the conditions surrounding the custody of a child that could have a significant effect on the child's well-being. *Vodvarka v Grasmeyer*, 259 Mich App 499, 511-513; 675 NW2d 847 (2003). A court may modify or amend a child custody order only "for proper cause shown or because of a change of circumstances." *Id.* at 508, quoting MCL 722.27(1)(c).

Plaintiff's recitation of potential grounds for proper cause center on three facts: 1. Defendant has allowed, on an informal basis, plaintiff to exercise a growing amount of parenting time since the 2005 judgment of divorce; 2. Defendant now works three days a week; and 3. Plaintiff moved and has remarried and his wife has a growing relationship with the children. Based on these factors, plaintiff asked the trial court to, in effect, formalize the parties' informal parenting time arrangement in the wake of a disagreement surrounding the arrangement.

We cannot conclude that the trial court's determination not to hold an evidentiary hearing was a palpable abuse of discretion or a clear legal error. As the trial court noted, the existing parenting time schedule was instituted after six days of testimony in the original divorce proceeding. Standing alone, the fact that plaintiff voluntarily modified the schedule from time to time to accommodate defendant's request for greater parenting time ought not be used as a sword to forge a change in the court ordered arrangement. To hold otherwise would discourage custodial parents from permitting a non-custodial parent greater parenting time than granted by court order.

The remaining factors cited by defendant also fail to support his claim of error. The legal obstacles to changes in custody orders are intentional in order to prevent upheaval in children's lives. *Vodvarka*, 259 Mich App at 509. Notably absent from plaintiff's allegations is any recitation of what effects the alleged changes have had or will have on the children. *Id.* at 513-514. The allegations appear to focus on what plaintiff wants—more guaranteed parenting time—and not on what impact this change would have on the children. It is not sufficient to identify material changes in circumstances without linking those changes to their effects on the children. *Id.*

We affirm. As the prevailing party, defendant may tax costs pursuant to MCR 7.219(C)(1).

/s/ Jane E. Markey
/s/ Brian K. Zahra
/s/ Elizabeth L. Gleicher